

DEPARTMENT OF SOCIAL SERVICES

744 P Street, Sacramento, California 95814



October 30, 1998

ALL-COUNTY LETTER NO.98-87

TO: ALL-COUNTY WELFARE DIRECTORS

Reason For This Transmittal

- ☐ State Law Change
- ☐ Federal Law or Regulation Change
- ☒ Court Order or Settlement Agreement
- ☐ Clarification Requested by one or More Counties
- ☐ Initiated by CDSS

SUBJECT: CLARIFYING PROCEDURES FOR ASSESSING A MINOR'S NEED FOR PROTECTIVE SUPERVISION IN THE IN-HOME SUPPORTIVE SERVICES PROGRAM

This All-County Letter informs counties of a clarification in the In-Home Supportive Service (IHSS) Program, which resulted from the settlements of the Garrett v. Anderson and Lam v. Anderson court cases. The clarification covers procedures for assessing a minor's need for protective supervision (PS) under Manual of Policies and Procedures (MPP) § 30-757.17.

Under the terms of the judgment and ACL No. 98-58, we are citing the state regulations, and statutes which this ACL clarifies.

Counties should apply the substantive standards for protective supervision in MPP § 30-757.17 while following the assessment procedures clarified in this ACL.

ASSESSING MENTAL FUNCTIONING OF MINORS

- A county social worker should always assess an IHSS eligible minor for mental functioning MPP § 30-756.1, 756.2, 761.261; Welfare & Institutions Code (WIC) § 12300(d)(4), 12301.1, 12309, (b)(1)(2)(c) The following steps must be taken when assessing a minor's mental functioning:
 - The county social worker must review a minor's mental functioning on an individualized basis and must not presume a minor of any age has a mental functioning score of "1." MPP § 30-756.372; WIC § 12301(a), 12301.1.

- A county social worker must assess all eligible minors for a mental impairment. In doing so, the worker must request the parent or guardian to obtain available information and documentation about the existence of a minor's mental impairment. MPP § 30-756.31, 756.32. For example, is the minor SSI eligible based on mental impairment? Or is the minor eligible for regional center services based on mental retardation, autism, or a condition like mental retardation or needs services like someone with mental retardation?
- A county social worker must evaluate a mentally impaired minor in the functions of memory, orientation, and judgement. MPP § 30.756.372.
- The county social worker should review the information, and documentation provided by the parent or guardian. A county social worker is not required to independently obtain such information and documentation, but should ask parents or guardians to do so if they can.

ADVISING PARENTS OF THE CONDITIONS FOR A MINOR TO RECEIVE PROTECTIVE SUPERVISION

- A county social worker must advise parents or guardians of a minor with a mental impairment of the conditions for receiving PS.
- A county social worker must advise parents or guardians of the availability of PS. A parent or guardian does not have to specifically request this information. MPP § 30-760.21, 760.23, 760.24; WIC § 10061, 12301.1, 12309(c)(1).
- A county social worker is not to presume that services, which are otherwise compensable, will be provided voluntarily by a parent or guardian or anyone else in accordance with MPP § 30-763.622.

ASSESSING A MINOR'S NEED FOR PROTECTIVE SUPERVISION

- A county social worker must assess the minor's need for PS under MPP § 30-757.17, if the minor has a mental impairment.
- A county social worker must assess each minor with a mental impairment for PS based on individual need. MPP § 30-756.1, 756.2, 761.261; WIC § 12300(d)(4), 12301.1, 12309(b)(1), (2)(C). In doing so, request the parent or guardian to obtain available information and documentation about a minor's mental impairment, including other agency records like those from regional centers with the written consent of parents or appropriate persons, and then review such information and documentation. (MPP 30-761.26). A county

is not required to independently obtain such information and documentation, but must ask the parent or guardian to do so.

- A county social worker must determine whether a minor needs more supervision because of his/her mental impairment than a minor of the same age without such impairment. WIC § 12300(d)(4).
- A minor must not be denied PS based solely on age. WIC § 12301.1.
- A minor must not be denied PS based solely on the fact that the minor has had no injuries at home due to the mental impairment so long as the minor has the potential for injury by having the physical ability to move about the house (not bedridden). MPP § 761.26, MPP § 30-763.1; WIC § 12300.
- A minor must not be denied PS solely because a parent leaves the child alone for some fixed period of time, like five minutes. MPP § 30-761.26, 30-760.24, 30-763.1; WIC § 12301.1.
- A county social worker must consider factors such as age, lack of injuries and parental absence, together with all the other facts, in determining whether or not a minor needs PS. WIC § 12301.1.

Any additional questions or clarification pertaining to this court case or the ACL may be directed to the Operations and Technical Assistance Units and the analyst assigned to your county at (916) 229-4000.

Sincerely,

***Original Document Signed By
Donna L. Mandelstam on 10/30/98***

DONNA L. MANDELSTAM
Deputy Director
Disability and Adult Programs Division

Attachment: Superior Court Order

SUPERIOR COURT OF CALIFORNIA
SAN DIEGO COUNTY

) Case No.: No. 712208
DOSSIE M. GARRETT and DANIEL A.)
GARRETT, by his guardian ad litem)
DOSSIE M. GARRETT.,) STIPULATION FOR ENTRY OF
Plaintiffs-Petitioner) FINAL JUDEMENT AND JUDGMENT
)
v.)
)
ELOISE ADERSON, Director,, California) Dept: 43
Department of, Social Serivces, and,) Judge: Hon J. Michael Bollman
CALIFORNIA DEPARTMENT OF, SOCIAL) Filed: July 9, 1997
SERVICES,) Trial: June 12, 1998
Defendents-Respondent))

Plaintiffs-Petitioners Dossie M. Garrett and Daniel A. Garrett by his guardian ad litem Dossie M. Garrett t through their attorney Charles Wolfinger. and defendents-respondents Eloise Anderson, in her capacity as Director of the California Department of Social Services and the California Department of Social Services (collectively "Social Services"), by their attorneys Daniel E. Lungren, Attorney General of the State of California by Deputy Donald P. Cole, have met and conferred concerning the issues presented by this lawsuit. To avoid the expense and uncertainty of future litigation, the parties have agreed to settle the matter in dispute between them.

In the interests of a prompt and final settlement consistent with the public interest and responsibilities of Social

1 services.

2 THE PARTIES STIPULATE AS FOLLOWS:

3 1. The parties have reached a mutually acceptable
4 resolution of their dispute and agree to entry of judgment
5 against Social Services. This judgment shall order a permanent injunction
6 against Social Services that may be modified by any lawful means,
7 including:

8 A) Noticed motion or

9 B) In the case in which a statutory or regulatory
10 change would operate to change the injunction, Social Services
11 shall give 30 days written notice to Charles Wolfinger at his last
12 address of record in this matter before such changes are
13 implemented

14 2. No term of this agreement shall be construed as an
15 adjudication or admission of fact or law.

16 3. The Court may issue a mandatory injunction against
17 defendants-respondents Social Services that no later than 120 days
18 after service of a conformed copy of this judgment all on counsel of
19 record for Social Services, Social Services will issue an All
20 County Letter instructing counties about the procedures for
21 assessing whether a minor eligible for In-home Supportive Services
22 (IHSS) needs protective supervision, which shall include all the
23 following points, but not necessarily in the exact language, with
24 appropriate citations to the Welfare and Institutions Code ("WIC")
25 and Manual of Policies and Procedures ("MPP"):

A) A county must assess mental functioning of all
IHSS eligible minors including by taking the following steps:

(1) Assess an IHSS eligible minor for a mental
impairment. (WIC §§ 12300, subd. (d)(4), 12301.1, 12309, subd.

(b) (1) (2) (C); MIPP §§ 30-756.1, 765.2; 761.261.)

(2) Request the parent or guardian to obtain
available information and documentation about the existence of a
minor's mental impairment, including about whether a minor is SSI
eligible based on mental impairment or eligible for regional center
services based on mental retardation. autism or a condition like
mental retardation or needs services like someone with mental
retardation, and then review such information and documentation.
(MIPP §§ 30-756.31, 756.32.) A county is not required to

1 independently obtain such information and documentation, but must
2 ask the parent or guardian to do so.

3 (3) For minors with some mental impairment, assess
4 mental functioning as provided for in the regulations.
(MPP §§ 30-736.1, 756-2.)

5 (4) A county may not automatically assign a "1" to
6 mental functioning for a minor of any age; mental functioning must
7 be reviewed based on an individualized evaluation. (WIC §§ 12301.
8 subd. (a), 12301.1; MPP § 30-756.372.)

9 B) A county must advise parents of a minor with a
10 mental impairment of the conditions for receiving protective
11 supervision including by taking the following steps:

12 (1) Do not presume that parents will provide
13 otherwise needed services voluntarily. (MPP § 30-763.622.)

14 (2) Advise parents of the availability of
15 protective supervision; parents do not have to specifically request
16 it. (WIC §§ 10061, 12301.1, 12309, subd. (c)(1); MPP §§ 30-760-21,
17 760.23, 760-24.)

18 C) A county must assess the minor's need for
19 protective supervision if minor has a mental impairment including
20 by taking the following steps:

21 (1) Assess each minor with a mental impairment for
22 protective supervision based on individual need. (WIC §§ 12300,
23 subd. (d) (4), 12301.1, 12309, subd. (b) (1), (2) (C); MPP §§ 30-
24 756.1, 756.2, 761.261.)

25 (2) Request the parent or guardian to obtain
available information and documentation about a minor's mental
impairment, including other agency records like those from regional
centers with the written consent of parents or appropriate persons,
and then review such information and documentation. (MPP § 30-
761.26.) A county is not required to independently obtain such
information and documentation, but must ask the parent or guardian
to do so.

(3) Determine whether a child needs more
supervision because of his mental impairment than a child of the
same age without such an impairment. (WIC § 12300, subd. (d) (4).)

(4) A county may not deny a minor protective supervision based solely on
age. (WIC § 12301.1.)

1 (5) A county may not deny a minor protective
2 supervision based solely on the fact that the minor has had no
3 injuries at home due to the mental impairment so long as the minor
4 has the potential for injury by having the physical ability to move
about the house (not bedridden). (WIC § 12300; MPP § 30-763.1.)

5 (6) A county may not deny a minor protective
6 supervision solely because a parent leaves the child alone some
fixed period of time, like five minutes. (§ 12301.1.)

7 4. Social Services will set aside the Director's Alternate
8 Decision, dated November 13, 1996. In the Matter of Hearing.
#96208113, for Claimant Dossie M. Garrett, issue a new decision
9 consistent with the terms stipulated above, finding Daniel A.
10 Garrett eligible for protective supervision retroactive to
11 April 10, 1996 and pay plaintiff Dossie M. Garrett retroactive IHSS
with prejudgment interest from April 10, 1996 through November 1,
1997.

12 5. Plaintiffs-petitioners' counsel, Charles Wolfinger, is
13 entitled to reasonable attorney fees and costs, the amount to be
14 agreed on or determined after a noticed motion filed within 60 days
from the date of entry of judgment.

15 FOR PLAINTIFFS-PETITIONERS

16
17 Dated: 6/8/98

18 BOSSIE M . GARRETT, Plaintiff and
19 Guardian ad Litem for Plaintiff
20 DANIEL A. GARRETT

21 Dated: 6/10/98

22 CHARLES WOLFINGER
23 Attorney for Plaintiffs-Petitioners
24 FOR DEFENDANTS-RESPONDENTS

25 Dated: June 10, 1998

LAWRENCE B. B. BOLTON
Deputy Director, Legal, Division
Department of Social Services

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Daniel E. LUNGREN, Attorney General
of the State of California
John H. SANDERS Supervising
Deputy Attorney General

Dated: 6/11/98

DONALD P. COLE, Deputy
Attorney General
Attorneys for Defendants-Respondents
Eloise Anderson, Director, and
California Department of Social
Services

JUDEMENT

Having read and considered the foregoing terms, THIS COURT
HEREBY ORDERS that the above stipulation at the parties is the
final Judgment of the court.

Dated:

HON J. MICHAEL BOLLMAN, JUDGE
San Diego County Superior Court